

REMARKS

This Amendment is submitted in reply to the Non-Final Office Action mailed on July 30, 2009. No fee is due in connection with this Amendment. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00692 on the account statement.

Claims 1-16 are pending. In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §112, second paragraph. Claims 1-16 are rejected under 35 U.S.C. §102. In response, Applicants have amended Claims 1, 9 and 15-16 and have canceled Claims 2-5 without prejudice or disclaimer. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 10, line 5-page 11, line 34. For at least the reasons set forth below, Applicants respectfully submit that the rejections should be reconsidered and withdrawn.

In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that there is no antecedent basis for "the capsule" in Claims 1 and 15-16, "the movable part" in Claims 1 and 15, and "the fixed part" in Claims 1 and 15. See, Office Action, page 3, lines 18-23. In response, Applicants have amended Claims 1 and 15-16 to correct the antecedent basis for the phrases cited by the Patent Office. For at least these reasons, Applicants believe that Claims 1-16 fully comply with the requirements under 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-16 under 35 U.S.C. §112, second paragraph be reconsidered and withdrawn.

In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,776,527 to Blanc ("*Blanc*"). Applicants respectfully submit that *Blanc* is deficient with respect to the present claims.

Currently amended independent Claims 1 and 15-16 recite, in part, capsule extraction devices comprising a first fixed part, a second movable part, the second movable part is so constructed and arranged to move the capsule from the intermediate position into the extraction position when the device is closed, wherein the means for guiding comprises stopping means configured to keep the capsule in the intermediate position along an axis offset relative to the

axis of the capsule in the extraction position in the housing, and wherein the second movable part is configured to force the capsule to move past the stopping means when the capsule travels from the intermediate position to the extraction position. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 10, line 5-page 11, line 34. The capsule extraction devices of the present claims provide a consumer with an extraction system that is of simpler design, less costly and mechanically reliable. The capsule may be inserted into the device without trial and error, without excessive manipulation, and without risk of incorrectly positioning the capsule in the device. Additionally, the present extraction devices limit the number of pieces necessary, in particular the number of movable pieces of the device, in order to reduce its complexity and its production cost. See, specification, page 2, line 32-page 3, line 5. In contrast, Applicants respectfully submit that *Blanc* fails to disclose or suggest each and every element of the present claims.

Blanc fails to disclose or suggest a second movable part so constructed and arranged to move the capsule from an intermediate position to an extraction position as required, in part, by the present claims. *Blanc* also fails to disclose or suggest a stopping means configured to keep the capsule in the intermediate position along an axis offset relative to the axis of the capsule in the extraction position as required, in part, by the present claims. Further, *Blanc* fails to disclose or suggest wherein the second movable part is configured to force the capsule to move past the stopping means when the capsule travels from its intermediate position to its extraction position as required, in part, by the present claims.

Instead, *Blanc* is entirely directed to the use of a pre-dosed bag (e.g., a “dosette”) that includes a sufficiently rigid material acting as a frame. The dosette may be used in conjunction with an espresso machine that includes movable abutments and a movable cylindrical body and piston combination. See, *Blanc*, Abstract. The tablet 1 of *Blanc* may be held in place during extraction by abutments 9, the cylindrical body 10 and the heater 7. See, *Blanc*, column 4, lines 39-45. There exists no intermediate position of the tablet 1 of *Blanc*. The device of *Blanc* cannot hold the tablet 1 in a position along an axis that is offset relative to the axis of the tablet 1 in an extraction position. Instead, the device of *Blanc* is configured only to insert the tablet 1 for extraction, and to open the device to release the tablet 1. In other words, the structure of *Blanc* is not capable of being configured in an intermediate and an extraction position. Accordingly, the

device of *Blanc* cannot disclose the second movable part of the present claims, or the stopping means configured to keep the capsule in the intermediate position along an axis offset relative to the axis of the capsule in the extraction position in the housing, and wherein the second movable part is configured to force the capsule to move past the stopping means when the capsule travels from the intermediate position to the extraction position as required, in part, by the present claims.

The Patent Office asserts that “[w]hile features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.” See, Office Action, page 4, lines 3-6. Applicants note, however, that providing structural elements that are “so constructed and arranged” or “configured” to perform a function requires a specific structural arrangement (e.g., a specific construction). For example, the stopping means of the present claims are configured to keep the capsule in the intermediate position along an axis offset relative to the axis of the capsule in the extraction position in the housing. Further, the second movable part of the present claims is configured to force the capsule to move past the stopping means when the capsule travels from the intermediate position to the extraction position. For at least the reasons mentioned above, the structure of the device in *Blanc* is not structurally equivalent. Thus, Applicants respectfully submit that the present claims are not anticipated by *Blanc*.

Moreover, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Blanc* fails to disclose each and every element of the present claims, *Blanc* fails to anticipate the present claims.

Accordingly, Applicants respectfully request that the rejection of Claims 1-16 under 35 U.S.C. §102 as being anticipated by *Blanc* be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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